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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.R. et al., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.R.,

Defendant and Appellant.

B211031

(Los Angeles County
Super. Ct. No. CK71521)

APPEAL from orders of the Superior Court of Los Angeles County,
Terry Troung, Referee. Modified and, as modified, affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and
Appellant.

James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County
Counsel, for Plaintiff and Respondent.

D.R. (mother) appeals orders of the juvenile court pursuant to which mother's children, B.R. and M.R., were declared dependent and removed from mother's care. Mother contends there is insufficient evidence to support the jurisdictional finding or the disposition order and the juvenile court erroneously limited mother's educational rights as to both children and improperly ordered mother to participate in a mental health assessment. We modify the orders to delete the limitations imposed on mother's educational rights as to B.R.; in all other respects, the orders are affirmed.

FACTS AND PROCEDURAL BACKGROUND

1. The detention of the children.

The children came to the attention of the Department of Children and Family services (the Department) as the result of an investigation conducted by Santa Monica Police Officer Cory Rytterager. On January 11, 2008, Roosevelt Elementary School vice-principal Victoria Hurst telephoned Rytterager regarding nine-year-old M.R., who enrolled four days earlier. Hurst indicated M.R., her mother and sister had been placed in a motel by Ocean Park Community Center (OPCC). When school staff asked about M.R.'s previous school, mother became loud and argumentative. In an office, mother stated M.R. stopped attending Cowan Elementary School in Los Angeles on September 16, 2005, after a teacher grabbed M.R. by the arm and the police did nothing. Hurst assessed M.R.'s educational development and found she functioned at a Kindergarten level. Hurst referred mother to Franklin Elementary School.

Mother's OPCC case manager, who wished to remain anonymous, verified mother was an OPCC client and indicated mother repeatedly had been told to enroll the children in school or lose her motel voucher. The case manager indicated concern about mother's erratic behavior and hostile demeanor.

Rytterager learned mother was the subject of a psychiatric hold on January 27, 2005. Rytterager further was advised mother is bipolar and is not receiving psychiatric services.

Mother enrolled M.R. at Franklin Elementary School on January 14, 2008. However, when mother learned the third grade teacher, Eric Reff, was a male, she demanded M.R. be placed with a female teacher. The school refused to change M.R.'s teacher. On January 17, 2008, Reff told Rytterager that M.R. was anxious in class and unable to comprehend third grade work. Reff tried to accommodate M.R. by sending her to the Kindergarten classroom for an hour a day for remedial tutoring and by asking female aides to sit with her. Rytterager attempted to interview M.R. but had difficulty understanding her, even with the help of a vice principal.

On January 28, 2008, the Franklin principal attempted to discuss M.R.'s educational assessment with mother. Mother became agitated and refused to participate in the meeting unless M.R. sat with her, saying there were too many men in the area.

On January 30, 2008, at 6:55 a.m., Rytterager went to mother's motel room and found M.R. home alone. When asked mother's whereabouts, M.R. responded, "I can't tell you." As Rytterager left the motel room with M.R. at 7:20 a.m., mother arrived and started yelling. Mother became agitated and was arrested for child endangerment and resisting arrest. M.R.'s sister, 15-year-old B.R., was transported from her school to the Santa Monica Police Department. Rytterager took the children into protective custody because they could not provide the name of an alternate caregiver. B.R. stated she formerly lived with maternal aunts or with a friend who had since moved. When asked why mother was afraid of men, B.R. indicated mother was "gang raped at the VA Hospital in West Los Angeles" while recuperating from surgery.

Rytterager verified that mother filed a sexual assault report on May 17, 2007. The detective assigned to the case indicated mother has been uncooperative and does not return phone calls.

The detention report indicated mother twice previously had been referred to the Department. On February 6, 2004, a school reported M.R. behaves poorly in class, has poor socialization skills and poor school attendance. Mother told the reporting party M.R. was abused at the age of two years at a day care center. The reporting party offered

mother mental health services but mother refused. M.R. did not return to school and attempts to contact mother were unsuccessful.

On September 20, 2005, M.R.'s school reported mother was hostile toward school staff and mother stated M.R. was abused in four prior preschools. Mother refused to provide a contact phone number or address.

The CSW who transported the children to foster placement indicated both children "appeared physically healthy and emotionally pleasant."

Mother appeared at the detention hearing on February 4, 2008, and counsel was appointed to represent her.

2. Placement with maternal uncle.

In February of 2008, the children were moved from foster care and placed in the home of maternal uncle. The Department reported mother and the children lived with maternal uncle from 1999 until 2003 or 2004, maternal uncle has been involved with the children since their birth and he is interested in assuming responsibility for their care.

3. The first request to limit mother's educational rights

On March 6, 2008, the Department filed an application for an order limiting mother's educational rights based on mother's history of neglecting M.R.'s educational needs, refusing to sign for educational assessments and refusing services when offered. The application requested appointment of maternal uncle as the educational representative of the children.

4. Jurisdictional statements.

Maternal uncle told dependency investigator (DI) Catherine Woillard that, after mother and the children moved from his home, the children would stay with him two or three days a week and would stay at the maternal aunt's home two to three days per week. However, mother did not spend the night and maternal uncle did not know where mother stayed.

Maternal aunt told Woillard she assumed mother stayed at a hotel and indicated mother worked as a home health aide and went to school at night. The maternal aunt did not know where mother worked but indicated she had been employed for perhaps a year. Maternal aunt reported she and her sister once had to go to a hotel to sit with the children when they were informed mother had left the children alone. The children had been alone for least one hour before they arrived and mother did not return for another 30 minutes.

B.R. told Woillard mother would leave her alone for a couple of hours at a time and B.R. did not know what mother did during that time. On the morning of January 30, 2008, mother walked B.R. to the bus stop and stayed until the bus arrived. Mother did this every day.

The report concluded “four different schools, OPCC, and the Santa Monica Police Department describe . . . mother’s behavior as erratic, hostile, resistant, paranoid and aggressive. Further, two prior hotline referrals from mandated reporters indicate that the mother acted . . . aggressive[ly] and refused to provide information to the schools.” Although mother often left the children with relatives to work or go to school, mother had not provided the Department any school or employment information.

Maternal uncle reported mother visited regularly on Fridays. The Department noted M.R. demonstrates developmental delays and significant speech delay and suggested referral to the Regional Center.

5. The second request to limit mother’s educational rights.

On April 24, 2008 the Department again requested limitation of mother’s educational rights, noting a psychological assessment of M.R. through the school district could not be conducted without mother’s written approval. The Department also requested a psychological evaluation of mother under Evidence Code section 730 because mother appears to have mental health issues that interfere with her ability to make appropriate parental decisions.

6. Adjudication of the dependency petition.

One week before the contested adjudication, the juvenile court granted mother's request for self representation.¹

At the adjudication, mother cross examined DI Woillard with respect to hearsay statements in the Santa Monica police report and M.R. testified.

At the start of the second day of the contested hearing, the juvenile court indicated its tentative ruling was to sustain only the count that alleged mother left M.R. home alone in a motel room for an extended period of time without adult supervision and a count that alleged the children's father has failed to provide the necessities of life and was whereabouts unknown. The juvenile court indicated it would not sustain the count alleging mother had mental health problems.

After CSW Mark White testified, the juvenile court sustained the petition as indicated and continued the matter for a contested disposition.

7. Disposition; the third request to limit mother's educational rights.

A report dated August 27, 2008, indicated mother had not shown any willingness to cooperate in the case plan and had not provided proof of enrollment in parenting class or individual counseling.

On September 3, 2008, the principal of Franklin Elementary School reported mother was at the school attempting to disenroll M.R. because M.R. had not been placed in the fourth grade. Mother was "confrontational and challenging" and the principal requested a CSW attend any future meetings between mother and school staff. The Department again requested mother's educational rights be limited.

Before the contested hearing, the juvenile court reappointed counsel to represent mother. The juvenile court ordered mother to attend parenting class and individual counseling to address case issues. The juvenile court ordered the children removed from

¹ The first and second attorneys appointed to represent mother successfully moved to withdraw as her counsel. The third attorney appointed to represent mother was relieved when mother requested pro per status.

mother's care. In support of this order, the juvenile court indicated, "I do not know where the mother resides. All we have for the mother is a P. O. Box, which I cannot send a social worker out to assess." The juvenile court also indicated it remained concerned about mother's conduct with respect to M.R.'s education but denied the request to limit mother's educational rights and the request for an evaluation under Evidence Code section 730, pending a report from mother's therapist. The juvenile court ordered the Department to assist mother to obtain appropriate housing and an educational assessment of M.R. At the close of the hearing, the juvenile court advised mother, "I want you to have a place that I can order the social worker to go out and check. Until I have that place, I'm not releasing these kids. I need to know where they're going to be living."

8. Limitation of mother's educational rights.

A report dated October 28, 2008, indicated mother's recent visits at maternal uncle's home had been unannounced and disruptive, especially for B.R., whose grades had slipped. Maternal uncle reported mother's interaction with the children consists of complaining about the system and saying she will get them back soon. The report indicated the staff at M.R.'s "school is overwhelmed with mother's consistent demands and disruptions" and has requested the Department's assistance in handling "mother's hostile and disruptive interaction on the school campus . . . [which] creates a negative experience for everyone . . . that is working with M.R. to help her catch up to her grade level." The school requested attendance of a CSW at any future meeting with mother as they feel mother's behavior is "unpredictable and hostile." The report indicated mother's request to move M.R. to the fourth grade reflects "a complete lack of understanding as to where her daughter is currently functioning."

The Department again requested limitation of mother's educational rights and an evaluation of mother under Evidence Code section 730 to assist the Department to provide reunification services and to determine whether medication or residential mental health services would be appropriate.

On October 28, 2008, the juvenile court granted the Department's request to limit mother's educational rights and appointed maternal uncle the educational representative of the children. The juvenile court denied the request for an evaluation of mother under Evidence Code section 730 evaluation but ordered mother to participate in a mental health assessment. The juvenile court acknowledged it had not sustained the count alleging mother had mental health issues but indicated, "I do believe that there is something going on here."

CONTENTIONS

Mother contends the evidence did not support the juvenile court's jurisdictional finding or its disposition order. Mother also contends the juvenile court erred in limiting her educational rights and in ordering her to participate in a mental health assessment.

DISCUSSION

1. The evidence supports the jurisdictional finding.

Mother contends the allegation she left the children alone for extended periods of time was insufficient to support the assertion of jurisdiction under Welfare and Institutions Code section 300, subdivisions (b) and (j).² Mother further asserts the phrase "extended period of time" is vague and CSW White admitted he could not define the phrase. Mother notes her family members reported mother routinely arranged for child care when mother went to school or work and maternal aunts had to sit with the children only once and, on that occasion, mother returned within an hour. Although mother walked B.R. to the bus stop on a daily basis, mother did this to protect B.R. from construction workers who harassed her. According to mother, the evidence showed only that mother sometimes left the children alone for a couple of hours and the children

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Section 300, subdivision (b), describes, inter alia, a child who has suffered or is at substantial risk of suffering serious physical harm or illness as the result of the failure of a parent to supervise or protect the child adequately. Section 300, subdivision (j), permits jurisdiction over a child whose sibling has been abused or neglected and there is a substantial risk the child also will be abused or neglected in the same manner.

always knew where mother was. Thus, mother merely left a 15 year old to baby-sit a nine year old.

Mother further contends leaving a nine-year-old child alone for a short amount of time does not expose the child to substantial risk of harm and, even if it did, this type of harm could have been eliminated by child care for M.R. while mother walks B.R. to the bus. Mother concludes there is no current risk of harm to either child. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

At a jurisdictional hearing, the question is “ ‘whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.) Evidence of past acts may be probative of current conditions and may establish a substantial risk of harm if there is “ ‘some reason to believe the acts may continue in the future.’ [Citations.]” (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824.) In reviewing a juvenile court’s jurisdictional findings, we apply the substantial evidence test. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

Application of these principles reveals mother’s arguments lack merit. Mother left M.R. alone in a motel room daily, she frequently left both children alone for hours at a time and showed no regret about her actions. Maternal relatives had to intervene to protect the children and the juvenile court reasonably could conclude leaving the children alone was symptomatic of a larger problem that put the children at substantial risk of harm.

Mother also argues this case falls in the line of authority that has found sustained allegations insufficient to authorize jurisdiction. (E.g., *In re David M., supra*, 134 Cal.App.4th at p. 829-830 [no evidence of risk of harm to children from mother’s or father’s mental illness, or mother’s substance abuse]; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134-1135 [bruise on child’s face not a severe injury sufficient for jurisdiction]; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 541-542 [removal improper unless schizophrenia of parents affected children]; *In re W.O.* (1979) 88 Cal.App.3d 906, 909-911 [cocaine beyond the reach of the children, marijuana in a drawer the children

could not open and father's admission of occasional drug use did not justify removal of children].) However, these cases uniformly involve a single incidence of parental misconduct or a situation in which a parent's mental illness or drug use did not affect the children. Here, mother's behavior amounted to a continuing course of conduct that placed the children at risk.

Thus, substantial evidence supports the sustained language of the petition under section 300, subdivisions (b) and (j).³

2. *The disposition order.*

Mother contends the alleged acts of neglect, leaving the children alone, occurred sporadically, did not present a current risk of harm to the children and mother can easily remedy the problem by obtaining child care. Mother argues it appears the juvenile court relied on mother's lack of a demonstrated residence and the failure to enroll M.R. in school. However, M.R. was attending school and homelessness is insufficient to warrant assumption of jurisdiction. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212.)

Mother's arguments are not persuasive.

In order to remove a child from a parent with whom the child resided at the time a dependency petition was filed, section 361, subdivision (c)(1), as relevant here, requires the juvenile court to find, by clear and convincing evidence, "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the" child if he or she were returned home, and "there are no reasonable means by which" to protect the child absent removal from the parent's physical custody. (§ 361, subd. (c)(1).)

"The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the

³ We note that, even had mother succeeding in obtaining a reversal of both of these counts, there remains a valid basis for jurisdiction under the count that alleged the children's father failed to provide the necessities of life. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Mother does not dispute the validity of this jurisdictional finding.

child. [Citations.]” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

On a challenge to an order removing a dependent child from a parent, we apply the substantial evidence test. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462-463; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) While the juvenile court must find clear and convincing evidence, our standard of review is to determine whether substantial evidence supports the juvenile court’s conclusion. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695; *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

Here, the evidence permitted the juvenile court to conclude, by clear and convincing evidence, that removal from mother’s custody was the only way to protect the children. M.R. did not attend school for two years while in mother’s care. From September 2007 through February 2008, B.R. was absent from school 46 times and tardy 19 times. At the time of the disposition hearing, mother had not yet commenced to participate in individual counseling and the only address mother had provided the Department was a P. O. Box.

Further, contrary to mother’s assertion, the juvenile court did not refuse to return the children because mother was homeless. Rather, the juvenile court indicated it did not know where mother resided and the children could not be returned until mother’s residence could be assessed. The juvenile court also ordered the Department to assist mother to obtain appropriate housing. None of these orders suggests the juvenile court refused to return the children to mother because she was homeless.

Mother also asserts there was insufficient evidence to support the finding, required by section 361, subdivision (c), that there were no reasonable means by which the children could be protected without removing the child from mother’s custody. Mother notes the children initially were detained only because mother was arrested and there was no relative or caregiver with whom the children could be placed. Mother had no previous child abuse history and no criminal charges were filed as a result of her arrest by Officer Rytterager. Mother further contends the juvenile court failed to consider less drastic

alternatives to removal of the children and failed to state the facts that supported the removal order. (§ 361, subd. (d).) Mother asserts the error cannot be considered harmless because there were alternatives to removal, such as child care for M.R. while mother walked B.R. to the bus stop, and the children could have been returned to mother under supervision. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60-61.)

The record supports the juvenile court's finding there was no reasonable probability the children could be returned to mother under Department supervision. Mother's problem was more than a single incident of abuse or neglect and more than morning child care or Department supervision was required to assure the children's safety in mother's care.

Although the juvenile court did not make a specific finding there were no less drastic means to protect the children, the error is harmless "where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.' [Citations.]" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) Here, we confidently conclude the juvenile court would not have made a finding in favor of mother in that the record demonstrates the juvenile court considered less drastic measures. The juvenile court continued the disposition hearing to permit the Department to investigate whether maternal uncle would permit mother to reside with the children in his home under a home of parent order. Maternal uncle declined to participate in such an arrangement.

Mother's argument there was no current risk that mother will leave the children alone is undercut by the evidence that showed mother continued to act in a detrimental manner toward the children even after they were removed from her care and declared dependents as evidenced by mother's attempt to remove M.R. from school.

In sum, substantial evidence supports the juvenile court's finding the Department made reasonable efforts to prevent the need to remove the children from mother's custody and that removal was the only means by which to protect the children.

3. *Limitation of mother's educational rights.*

Mother contends the restriction of her educational rights unnecessarily impinges on her relationship with her children and is particularly unwarranted in the case of B.R. because mother did not engage in negative behavior at B.R.'s school.

Parents have a constitutionally protected liberty interest in directing their children's education. (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1102; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1066.) However, when a child is a dependent, the juvenile court may limit a parent's ability to make educational decisions on a child's behalf by appointing a responsible adult to make educational decisions. (§ 361, subd. (a).) The statute indicates any limitations imposed "may not exceed those necessary to protect the child." (*Ibid.*) We review an order limiting a parent's educational rights under an abuse of discretion standard. (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1277.)

Here, the record is replete with evidence that demonstrates mother acted detrimentally with regard to M.R.'s education. Mother refused educational services for M.R., refused to sign releases and would not allow M.R. to participate in an educational assessment. M.R. did not attend school for two years and, even after the children were removed from her care, mother attempted to disenroll her. Based on these facts, the juvenile court properly could conclude that limitation of mother's educational rights as to M.R. was necessary.

However, the record presents a different situation as to B.R. Although B.R. had numerous tardies and absences, there was no showing these were caused by mother's interference with B.R.'s education or that mother had ever disrupted B.R.'s school. The statute directs that any limitations imposed "may not exceed those necessary to protect the child." (§ 361, subd. (a).) In light of this directive and in the absence of any evidence mother interfered with B.R.'s education, we modify the order to limit mother's educational rights only as to M.R. and strike that portion of the order appointing maternal uncle as B.R.'s educational representative.

4. *Mental health assessment.*

Mother contends the order directing her to participate in a mental health assessment “does not seem a logical means of curing th[e] minor problem” that brought mother to the attention of the juvenile court. (*In re Jasmin C.* (2003) 106 Cal.App.4th 177, 181-182 [error to order a non-offending parent to attend parenting class absent evidence the parent or the child will benefit from counseling].) Mother points out the only sustained allegation against her was that she left her children unattended and the allegation mother suffered mental health problems was not sustained. Mother argues the proper starting point in determining whether mother has mental health issues is to request a report from mother’s current therapist. Mother concludes the order for a mental health assessment constitutes an abuse of discretion.

A juvenile court has broad discretion to decide what is in a child’s best interest and to fashion orders accordingly. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) This discretion is not confined by the allegations of the dependency petition. (*Id.* at p. 1008.) Rather, a juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” (§ 362, subd. (a).)

Here, the evidence showed mother’s paranoid and confrontational attitude interfered with her ability to supervise and care for the children. Under these circumstances, an order directing mother to participate in a mental health evaluation was reasonable and appropriate.

DISPOSITION

The orders of October 28, 2008, are modified to strike the order appointing maternal uncle as B.R.'s educational representative; in all other respects, the orders are affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.